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7 JASON COOK, et al.,
8 Plaintiffs,
9 v.
10 STATE FARM GENERAL INSURANCE
11 COMPANY,
12 Defendant.

Case No. 21-cv-02458-MMC

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**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS; VACATING
HEARING**

Before the Court is defendant State Farm General Insurance Company's ("State Farm") Motion, filed December 3, 2021, "to Dismiss or Strike Portions of Plaintiffs' First Amended Complaint." Plaintiffs Jason Cook and Elfe Kuesters have filed opposition, to which State Farm has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter appropriate for determination on the parties' respective written submissions, VACATES the hearing scheduled for January 28, 2022, and rules as follows:

1. Contrary to State Farm's argument, plaintiffs have sufficiently alleged their refrigerators sustained a "direct physical loss" within the meaning of the subject policies (see FAC Ex. 1 at 7, Ex. 2 at 7), specifically, that "noxious and malodorous gases and liquids . . . physically altered the appliances' polymeric and other components, including the shelves, drawers, panels, and seals, as well as inner linings, foams, and insulations." (see First Amended Complaint ("FAC") ¶ 35; see also FAC ¶¶ 5-7, 32-34), and, consequently, the claims are not subject to dismissal for failure to allege a covered claim.

2. To the extent State Farm seeks dismissal of the action as a sanction for plaintiffs' having "disposed" of their refrigerators (see FAC ¶¶ 33-34), the request will be

1 denied as premature at the pleading stage. See Unigard Security Ins. Co. v. Lakewood
2 Engineering & Mfg. Corp., 982 F.2d 363, 369 (9th Cir. 1992) (observing "factually
3 specific, case-by-case analysis [is] necessary to determine proper penalty for destruction
4 of evidence"); Leon v. IDX Systems Corp., 464 F.3d 951, 958 (9th Cir. 2006) (holding "a
5 finding of willfulness, fault, or bad faith is required" before imposing sanction of dismissal
6 for spoliation of evidence; requiring district court to "consider less severe alternatives
7 than outright dismissal") (internal quotations and citations omitted).

8 3. The First Cause of Action, by which plaintiffs allege a claim for "Declaratory
9 Relief," is, as State Farm argues, wholly duplicative of the Second Cause of Action, by
10 which plaintiffs allege breach of contract, as both claims seek a determination as to
11 whether plaintiffs are entitled to benefits under their insurance policies. (See FAC ¶¶ 62,
12 66.) Consequently, the First Cause of Action is subject to dismissal as duplicative. See
13 Swartz v. KPMG LLP, 476 F.3d 756, 765–66 (9th Cir. 2007) (holding "[t]o the extent
14 [plaintiff] seeks a declaration of defendants' liability for damages sought for his other
15 causes of action, the claim is merely duplicative and [is] properly dismissed").

16 4. The Fourth Cause of Action, by which plaintiffs allege a violation of § 17200 of
17 the California Business & Professions Code, is subject to dismissal, as plaintiff do not
18 plead facts to support a finding that they are entitled to the injunctive relief identified in
19 the FAC or to restitution. See California v. IntelliGender, LLC, 771 F.3d 1169, 1174 (9th
20 Cir. 2014) (holding "private individuals" bringing claims under § 17200 are "limited to
21 injunctive relief and restitution").

22 a. With regard to injunctive relief, although plaintiffs seek an order prohibiting
23 State Farm from "continuing to deny property loss claims . . . for losses resulting from
24 unplanned power outages caused by a wildfire, lightning, or windstorms" (see Compl.
25 ¶ 81), plaintiffs fail to plead facts to support a finding "that they are realistically threatened
26 by a repetition of the [wrongful conduct]." See Gest v. Sajo, 443 F.3d 1177, 1181 (9th
27 Cir. 2006) (emphasis, internal quotation, and citation omitted) (setting forth requisite
28 //

1 showing for injunctive relief).¹

2 b. With regard to restitution, although plaintiffs seek an award based on
3 "premiums" they paid and/or "amounts . . . withheld" by State Farm (see FAC ¶ 82), those
4 sums are neither monies State Farm obtained "through an unfair business practice" nor
5 monies in which plaintiffs have "an ownership interest." See Korea Supply Co. v.
6 Lockheed Martin Corp., 29 Cal. 4th 1134, 1149 (2003) (setting forth requisite showing for
7 award of restitution); Benn v. Allstate Ins. Co., 2021 WL 5049101, at *6 (E.D. Cal.
8 October 29, 2021) (holding, where insurance claim was denied, plaintiff not entitled to
9 recover as restitution either paid premiums or unpaid benefits; finding "there [is] nothing
10 unlawful about the collection of premiums" and plaintiff lacked ownership interest in
11 unpaid benefits).

12 CONCLUSION

13 For the reasons stated above, State Farm's motion to dismiss is hereby
14 GRANTED in part and DENIED in part, as follows:

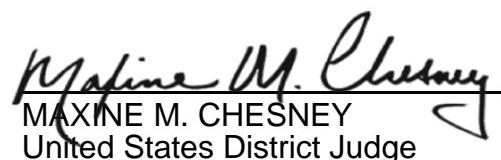
15 1. To the extent State Farm seeks dismissal of the First and Fourth Causes of
16 Action, the motion is GRANTED.

17 2. In all other respects, the motion is DENIED.

18 Should plaintiffs wish to amend the Fourth Cause of Action for purposes of
19 repleading their claim for injunctive relief, plaintiffs shall file a Second Amended
20 Complaint no later than February 11, 2022. If plaintiffs do not file a Second Amended
21 Complaint, the instant action will proceed on plaintiffs' Second and Third Causes of
22 Action.

23 IT IS SO ORDERED.

24 Dated: January 26, 2022


25 MAXINE M. CHESNEY
United States District Judge

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27 1 In their opposition, plaintiffs argue they are entitled to an injunction requiring
28 State Farm to "reopen and reprocess" their claims. (See Pls.' Opp. at 20:14-16.) In the
FAC, however, plaintiffs do not allege entitlement to such relief.